

April 22, 2015

Kelly Susewind
Special Assistant to the Director
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Dear Mr. Susewind,

Thank you for the opportunity to comment on the draft rule for Human Health Criteria and Implementation Tools for Surface Water Quality Standards. Washington Environmental Council (WEC) is a nonprofit organization that advocates for positive environmental change. A core area of our work is reducing water pollution that threatens the health of the public and our environment.

First, we want to acknowledge the hard work done by Department of Ecology (Ecology) staff over the many years to get to this point. Establishing water quality standards is one of the most complex, technical, and difficult issues our state faces. Washington urgently needs water quality standards that meet the requirements of the Clean Water Act and protect human health and the environment.

When Ecology submitted comments to EPA's draft rule in late 2015, Ecology expressed concern with aspects of the EPA rule because it did not accurately reflect the risks to the health of Washington residents from toxic and harmful water pollution. In fact, Ecology pointed out that EPA used fish consumption surveys and data that did not reflect the populations in Washington that are most at risk, which include tribes, Asian Pacific Islanders, and immigrant communities that rely on fish as an important component of their diet and for cultural reasons.¹

WEC also believes that developing standards and utilizing credible data to protect individuals who are most impacted by pollution is essential to any final rule. We also believe that environmental justice perspectives must be infused into the process and application of implementation tools to avoid untenable human health impacts.

For these reasons, we submit the following comments on the draft rule:

1. Water Quality Standards and Human Health Criteria:

¹ See <http://www.ecy.wa.gov/programs/wq/swqs/EPAletterWQCriteria12212015.pdf>

² See <https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2015-0174-0001> "Once finalized, Washington will have considerable discretion to implement these revised federal human health criteria through various water quality control programs including the NPDES program,



WEC supports the rule's inclusion of a 175 g/day and a one in one million (10⁻⁶) cancer risk rate for many chemicals subject to regulatory oversight. However, we are concerned about the draft rule's approach to not impose this stringent standard for some of the most important pollutants that impact human health today: mercury, arsenic, and polychlorinated biphenyls (PCBs). A number of tribes have significant expertise and data on what this regulatory approach means for their communities, and WEC supports the comments provided by experts such as the NW Indian Fisheries Commission on this issue.

WEC also recognizes that removing PCBs, mercury, and arsenic can be uniquely challenging. For example, despite an EPA ban on manufacturing PCBs in the late 1970s, the chemical continues to pollute more than a dozen Washington waterbodies, including the Spokane River, Duwamish River, Lake Whatcom, Wenatchee River, and Puget Sound. We are concerned that the current draft rule does not set the state on a course to reduce the number of PCB polluted waters as soon as possible. Although it is true that removing PCBs from entering our waters will require a wider range of strategies, one important step is to have strong limits in water quality standards and narrow and appropriate application of implementation tools on a case-by-case basis to provide flexibility only where meeting water quality standards is not feasible.

2. Implementation Tools

Effective implementation and enforcement of strong water quality standards is critical to adequately protect human health and the environment. The draft rule makes changes to existing implementation tools, namely variances, compliance schedules, and adds intake credits to the WAC.

In terms of variances, WEC understands the changes in the draft rule are intended to provide more clarity and details when a variance may be considered, requirements for an applicant requesting a variance, the process for reviewing and deciding on a variance application, and an interim review process to determine if a variance should be terminated or continue. Adding these details to the rule may help permittees and the agency in understanding the regulatory framework for a variance, and requiring a variance to go through a public rulemaking process may help with transparency in decisionmaking. But these steps alone are not sufficient to protect public health. To better understand how the details in the draft rule will be applied in practice, it would be helpful to include language explicitly identifying when a variance may not be considered or pursued.

Similarly, understanding when compliance schedules do not apply would help in understanding the limitations to how this unique implementation tool should be used. The language and four-part test for determining when a compliance schedule can be extended beyond ten years is also vague and broad. As referenced in the accompanying documents to the draft rule, the four-part test was the result of legislation. However, the WAC language should provide direction on the scope of these tools to avoid permittees or future Ecology decisionmakers from taking advantage



of the rule by interpreting it too broadly to meet the foundational water quality objectives in the Clean Water Act.

WEC is concerned about how the intake credits in the draft rule will be applied and what safeguards exist for disproportionately impacted communities. WEC believes it is important to push dischargers to reduce pollution, especially in areas with toxic “hot spots” affecting surface waters where people live, recreate, swim, and fish. We are concerned that the intake credit provision in the rule may be used to allow areas of high pollution concentrations to be maintained and compliance obligations on dischargers to be unfairly weakened based on the “no net addition” standard in the rule. We recommend this provision be removed with a process for discussing if it is necessary given the other implementation tools available to the agency to provide flexibility.

Finally, we imagine that the implementation process will be significant for Ecology regardless of whether the state agency adopts a final water quality standard for surface water or if EPA moves forward and adopts their proposed rule. EPA has clearly stated that under their draft rule, the federal agency expects Ecology to retain and utilize existing authority and discretion to implement the adopted standards under the requirements of 40 CFR 131.14.² Therefore, WEC believes it is essential for Ecology to follow a transparent, robust, and inclusive process to develop standards for implementing the standards to maximize water quality and human health benefits and improvements over time. More research and public education is needed on how other states, like Oregon, are implementing their water quality standards and the lessons that can inform Washington moving forward.

Once again, thank you for the opportunity to provide comments on the draft rule. Please don’t hesitate to contact Darcy Nonemacher (darcy@wecprotects.org) in our office with any questions. WEC is committed to working with Ecology, EPA, tribes, environmental and community organizations, businesses, and the public to move the state forward in reducing harmful pollution to our residents, aquatic species, and the environment.

Sincerely,

Darcy Nonemacher
Washington Environmental Council

² See <https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2015-0174-0001> “ Once finalized, Washington will have considerable discretion to implement these revised federal human health criteria through various water quality control programs including the NPDES program, which limits discharges to water except in compliance with a NPDES permit.”



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